THE HON'BLE SRI JUSTICE P.S.NARAYANA

WRIT PETITION No.13136 of 2007

Dated:23.10.2007

Between:

Chirathanagandla Koteswar Rao and others.

…Petitioners.

and

The Commissioner of Endowments and others.

…Respondents.

THE HON'BLE SRI JUSTICE P.S.NARAYANA

WRIT PETITION No.13136 of 2007

ORDER:

This Court issued Rule Nisi on 22.06.2007 and further granted interim direction as prayed for in W.P.M.P.No.16411 of 2007. W.V.M.P.No.1931 of 2007 is filed by respondents 4 and 5 to vacate the interim order. The learned Government Pleader for Endowments states that since the department is taking same stand as that of the Institution, no separate counter-affidavit need be filed. The counsel on record made a request for final disposal of the writ petition, and accordingly, the writ petition itself had been taken up for final disposal.

The petitioners filed the present writ petition for a writ of mandamus declaring the action of respondents 2 to 5 in conducting public auction on 21.05.2007, in pursuance of the notification, dated 05.05.2007, issued by the 4th respondent, ignoring that the petitioners are landless poor, as bad, illegal, arbitrary and contrary to Section 82 of the Andhra Pradesh Charitable and Hindu Religious Institutions and Endowments Act, 1987 (hereinafter called as "the Act", for the purpose of convenience), and also Andhra Pradesh Charitable and Hindu Religious Institutions and Endowments Lease of Agricultural Lands Rules, 2003 (hereinafter referred

to as “the Rules”, for the purpose of convenience) and being violative of Articles 14 and 21 of the Constitution of India and prayed for setting aside the auction proceedings, so far as they relate to the lands held by the 1st petitioner to an extent of Acs.2.30 cents; the 2nd petitioner to an extent of Acs.2.30 cents; the 3rd petitioner to an extent of Acs.3.45 cents and the 4th petitioner to an extent of Acs.3.80 cents of dry land in survey No.178 of Chowdavaram Village, Guntur Rural Mandal, Guntur District, and pass such other suitable orders.

Several averments were made in the affidavit filed in support of the writ petition. Several of the averments were denied in the counter-affidavit. Further, a reply-affidavit was filed further explaining the stands taken in the counter-affidavit.

Sri V.Venugopala Rao, learned counsel representing the writ petitioners, would submit that in view of the fact that the 3rd respondent, the Assistant Commissioner, had declared these petitioners as landless poor persons and issued certificates, till the said certificates are, either set aside, or modified, or in any way annulled, it cannot lie in the mouth of the respondents to contend otherwise. The learned counsel also had pointed out two relevant portions of the affidavit and also the reply-affidavit and the counter-affidavit as well and further had taken this Court through the relevant provisions of the Act and the Rules to substantiate his submissions. While concluding, the counsel also would contend that if any other amount is said to be due by the petitioners to the Institution, the petitioners are always ready and willing to discharge their obligations, in accordance with law. However, the petitioners cannot be deprived of their valuable rights, which had been declared by the 3rd respondent. Further, the counsel would maintain that though certain appeals had been filed, the relevant particulars have not been furnished.

Per contra, Sri M.V.Raja Ram, learned counsel representing respondents 4 and 5, had taken this Court through the contents of the

counter-affidavit and also had taken this Court through Section 82(1) and (2) of the Act as well and the relevant Rules and would maintain that the conditions specified by the Rules also had not been complied with. The learned counsel also would maintain that even in such a case, these petitioners are bound to participate in the auction and liable to pay 2/3rd of the bid amount. When that being so, in violation of the Rules, claiming to be the landless poor persons, the petitioners cannot continue in possession, and hence, the writ petition is liable to be dismissed and the interim order is liable to be vacated.

Learned Government Pleader for Endowments had placed before this Court the views expressed by this Court, while interpreting Rule 5(2) of the Rules and also Section 82(2) of the Act and would maintain that the respondents are entitled to exercise the option either to purchase the land in question or to continue as tenants by paying at least 2/3rd of the bid amount for the similarly placed lands as the lease amount. At any rate, in the facts and circumstances of the case, the petitioners are not entitled for any of the reliefs as prayed for.

Heard the learned counsel and perused the material placed before this Court.

It is stated that the 4th respondent-Temple is situated at Yanamadala Village of Pattipadu Mandal in Guntur District, and this institution owned vast extents of agricultural land and the petitioners are tenants for more than two and half decades. The relevant particulars also had furnished. The 1st petitioner is a tenant for agricultural land to an extent of Acs.2.30 cents; the 2nd petitioner to an extent of Acs.2.30 cents; the 3rd petitioner to an extent of Acs.3.45 cents and the 4th petitioner to an extent of Acs.3.80 cents of dry land in survey No.178 of Chowdavaram Village, Guntur Rural Mandal, Guntur District. It is also averred in para 4 of the affidavit filed in support of the writ petition that the petitioners are landless poor, as defined under Section 82 of the Act and they are paying prescribed lease amounts,

as enhanced from time to time, regularly to the authorities. It is also stated that on issuance of Lease Rules in G.O.Ms.No.379, dated 11.03.2003, the petitioners made applications under Rule 3 of the Rules, before the Assistant Commissioner, Endowments, Guntur, to determine the status as landless poor, as defined under Section 82 of the Act. After providing opportunity to the parties concerned, the 3rd respondent was pleased to declare these petitioners as landless poor persons and issued the certificates, and the relevant certificates, dated 15.10.2005, 16.06.2006 and 08.05.2006, respectively, also had been placed before this Court. It is further stated that by virtue of the determination made as required under Rule 3 of the Rules, aforesaid, the petitioners are entitled for certain benefits as provided under Section 82 of the Act. The authorities cannot threw away the landless poor persons from endowment lands, ignoring the said statutory mandates and the petitioners are entitled to be continued as tenants on payment of 2/3rd of the market rent for similarly placed lands as lease amount without resorting to public auction further, if they are not in a position to purchase the lands, in pursuance of the offer made by the authorities. It is further stated that ignoring the statutory mandates and statutory rules made thereunder, the 4th respondent, for extraneous reasons, resorted for conducting public auction behind their back even without there being compliance of statutory rules, such as, wide publication and other requirements. The 4th respondent-Temple, represented by the 5th respondent, had conducted public auction on 21.05.2007, for certain lands, including for the extents held by the petitioners, in a stage managed manner for the reasons best known to him for favour the persons in whom he was interested, depriving them of the benefits provided by the statute. The public auction conducted is illegal and contrary to Section 82 of the Act. It is further averred that a caveat was lodged before this Court stating that there is declaration obtained by the petitioners from the competent authority as landless poor and the said stand taken in the caveat is a false

stand. The petitioners had obtained a declaration as required under the statue from the Assistant Commissioner, Endowments, Guntur, through the proceedings, mentioned above, which became final. The 5th respondent having personally participated in the proceedings, before the 3rd respondent and having knowledge about the proceedings mentioned in the affidavit stating that the petitioners are not having the declaration obtained from the competent authority as per the Act shows the falsified intention of the

5th respondent. It is nothing but deliberate misrepresentation before this Court, which shows the conduct of the 5th respondent in conducting the affairs of the temple, according to his whims and fancies. The

5th respondent further misrepresented that the petitioners are continuing unauthorisedly in the land and not paying the 2/3rd of the market rate of maktha, in spite of repeated demands. In fact, the petitioners are paying lease amounts up to date, as demanded by him, under valid receipts, which are filed as annexure. Being the public servant, the 5th respondent deliberately making false statements, contrary to record and for misusing the public office and authority for his vested interests, which attracts suitable action. It is also mentioned that the

5th respondent is contemplating to fabricate antedated panchanama to deprive the legitimate right of the petitioners to continue in possession of the lands in question. It is further stated that there is no valid notice, as required under Rule 5 of the Rules. But, there is a notice issued on 18.04.2007, by the 4th respondent, which is not inconformity with the said Rule, which was replied suitably. The respondents cannot proceed with the public auction, without taking steps under Rule 5 of the Rules, particularly without taking possession as per law from them. Till date, the petitioners are paying rents and continuing in possession and enjoyment of suit schedule lands. In fact, they had represented before the authorities to pay the lease amounts as required under the statute being landless poor.

Further, it is stated that to the best knowledge of the petitioners, the auction proceedings, dated 21.05.2007, are yet to be approved by the competent authority and possession is yet to be delivered to the highest bidders on such confirmation. Till such time, it cannot be construed that there is a valid public auction and the highest bidders will not get any vested right. It is further submitted that till date, the petitioners are in possession of the subject lands and they had commenced agricultural operations. It is also averred that the subject lands are dry lands and the petitioners are in possession of small extents and below the specified extents, and they were declared as landless poor and are entitled for the benefits as provided under Section 82 of the Act. It is stated that the petitioners are paying lease amounts regularly and there is no default at any point of time during all these years. In these circumstances, being left with no other option, it is stated that the writ petitioners approached this Court praying for appropriate reliefs.

In the counter-affidavit filed by the respondents 4 and 5, which was sworn to by the Manager of Prattipadu Group of Temples, Prattipadu, Guntur District, several averments were denied. In para 4, it was averred that it is true that the petitioners are tenants only and subject temple is having vast extents of agricultural land. It is also, however, averred that the petitioners do not have any valid lease and hence, after expiry of the terms of tenancy, the tenants i.e., the petitioners, were given notice to pay the rents as per the market value, which they had not paid and hence, their tenancy was terminated by the Deputy Commissioner of Endowments and the possession was taken over by the 4th respondent. It is also averred that against the certificates, appeals had been preferred before the Joint Collector under Rule 4 of the Rules. Further, it is stated that Koteswara Rao sub-let the leasehold rights to one Seshaiah Chowdary, who is cultivating the lands in the name of the

1st petitioner. In respect of the 2nd petitioner, there is no lease transfer as

contemplated under Section 82 of the Act. Therefore, the alleged certificate issued by the Assistant Commissioner of Endowments, Guntur, taking into consideration of D.C.B. Register from 1985 onwards cannot be sustained, likewise, the 3rd petitioner to whom the certificate was issued on 08.05.2006, by the Assistant Commissioner from 1987-88 onwards and the 4th petitioner is concerned from 1997-98 onwards in its proceedings, dated 15.10.2005. It is also stated that the basis of the D.C.B.Register is to show that who are the tenants, but there is no lease confirmation as contemplated under the Rules. Therefore, once the lease is not in existence in favour of petitioners, though they are the tenants as alleged, it cannot be termed as having leasehold rights. Hence, the certificates issued by the 3rd respondent are questioned before the Joint Commissioner of Endowments as per the Rules. Petitioners never agreed to pay the 2/3rd of the market rent and taking into consideration of their representations, the Deputy Commissioner of Endowments cancelled their tenancy and as per the directions, the possession of the lands from the petitioners and other tenants had been taken before conducting the auction. The auction conducted on 21.05.2007 was in accordance with law, and hence, the allegations of the petitioners were denied in toto. In reply to para 7 of the affidavit filed in support of the writ petition, it is stated that the petitioners are alleging that the 4th respondent has filed a caveat petition stating that there is no declaration obtained by them from the competent authority as landless poor persons, since they did not have any lease in their favour at any point of time as contemplated under Section 82 of the Act. Section 82 of the Act does not give any right to purchase the property. Right to purchase the property is only when the temple is inclined to sell the property, but the devastanam cannot be compelled to sell the lands forcibly, like private owners and therefore, the rights envisaged under the Act would govern the field in the case of sale transactions commenced. The petitioners had made vague allegations against the 5th respondent, without any

documentary evidence and to mislead this Court, they had pleaded false allegations. Hence denied. It is also stated that in view of the circumstances stated hereinabove as well as under the circumstances, which the order is attacked to settle the legal proposition, the 4th respondent filed W.A.No.605 of 2007, since number of tenants in whose favour the leasehold rights are not confirmed basing on the D.C.B.Register, the Assistant Commissioner is giving certificate as landless poor persons and as a result of it they are claiming the property to be sold to them, which is objectionable and contrary to law. The Division Bench in W.A.No.605 of 2007 on 06.08.2007, directed the

4th respondent to avail remedy by filing vacate stay petition. It is also stated that the Assistant Commissioner of Endowments had not taken into consideration of the provisions of the Act, while issuing certificates to the landless poor. He had taken into consideration only six years earlier to the date of passing orders, instead of taking six years continuously in possession with leasehold rights as on the date of commencement of the Act and be continuously in possession as on the date of application and determine the condition that they were the valid leaseholders and as such, the order of the Assistant Commissioner of Endowments is null and void. These respondents preferred appeal to the appellate authority. Further it is stated that the 5th respondent had issued a valid notice in accordance with law, before conducting auction and the 4th respondent had already submitted that these respondents have taken possession of the petitioners as well as other tenants before conducting auction. The petitioners had not paid rents regularly as per the market value or at least 2/3rd of the market value and the same is evident from the records. The petitioners were never in possession and enjoyment of the lands as tenants after taking their possession. The auction had been confirmed and possession also delivered. The certificates obtained by the petitioners are in consonance with the Act. These respondents denied the allegations made by the

petitioners. The 4th respondent further stated that the land in question held by the petitioners had been cancelled by the Deputy Commissioner of Endowments and the same has become final and therefore, the petitioners are not entitled to claim that they are in possession of the property and on the other hand, they had no right to claim the lands, which were auctioned, as admitted by the petitioners, in which the petitioners never participated, or raised any objection, as their exclusive right, and therefore, in view of the said circumstances, the balance of convenience, prima facie case is in favour of the temple and if the temple lands are not allowed to function efficaciously, the temple will be put to great hardship and irreparable loss, which cannot be compensated by any means.

A reply-affidavit was filed, wherein several facts narrated in the affidavit filed in support of the writ petition again had been reiterated and further, the inconsistent stand taken at different parts of the counter-affidavit also had been pointed out. It is stated that the petitioners are continuing in possession and cultivating the subject lands even as on today. It is stated that the petitioners are denying the averment that there is an appeal preferred against the order of determination. It is also stated that the vacate petitioners had not furnished the numbers or particulars of the said appeals. A specific stand had been taken that no notice as such had been served in this regard. Further specific stand had been taken that it is incorrect to say that the possession of the land had been taken before conducting public auction by virtue of panchanama said to have been recorded on 03.05.2007 and the same is antedated to defeat the rights of the petitioners under Rule 5 of the Rules. It is the Executive Authority to issue notice either to terminate lease or to take possession but not the Deputy Commissioner. The public auction said to have been held on 21.05.2007 is illegal and is in violation of statutory provisions and the Rules made thereunder. Further specific stand has been taken that the 5th respondent had personally participated in the determination proceedings, but deliberately has been misrepresenting the facts in the caveat and in the

counter-affidavit. Further, it is averred in para 7 of the reply-affidavit that it is contended in the counter-affidavit that the possession of the subject land was already taken over. It is not mentioned, when such possession is taken over nor furnished other particulars such as in whose presence it was happened and who are there in possession at present. However, a certificate, dated 03.05.2007, had been filed styling it as panchanama. It is a paper panchanama without actual delivery of possession, subsequently prepared with antedate. The competent authority had issued certificates on 30.08.2007 certifying that the petitioners are cultivating the lands and raised cotton crop. It is further averred that all the petitioners were never dispossessed physically from the subject land and they are continuing agricultural operations. It is also stated that the petitioners are not only paying lease amounts regularly to the temple authorities, but also paying land revenue to the revenue authorities, as the temple authorities are not paying the same. Thus, the petitioners are paying more amounts to the authorities than required to be paid. The petitioners are tenants since decades and cultivating the subject lands till date by paying lease amounts being landless poor. In fact, the petitioners had taken so much pains to reclaim and in making the land cultivable. The Deputy Commissioner has no jurisdiction to issue any instructions, regarding leases. The Assistant Commissioner is competent to enquire into the matter and to decide whether the petitioners are landless poor or not and he rightly held after adjudicating that the petitioners are landless poor. Thus, the public auction, which is under challenge, is in contravention of statutory provisions and it is liable to be set aside. The balance of convenience is in favour of the petitioners.

These are the respective pleadings of the parties.

Section 82 of the Act reads as hereunder:

(1) "Any lease of agricultural land belonging to or given or endowed for the purpose of any institution or endowment subsisting on the date of commencement of this Act shall, notwithstanding anything in any other law for the time being in force, held by a person who is not a landless poor person stands cancelled.

(2) In respect of leases of agricultural lands held by landless poor person for not less than six years continuously, such person shall have the right to purchase such lands for a consideration of seventy five per centum of the prevailing market value of similarly situated lands at the time of purchase and such consideration shall be paid in four equal instalments in the manner prescribed. Such sale may be effected otherwise than by tender-cum-public auction:

Provided that if such person fails to purchase the land in accordance with this sub-section or is unwilling to purchase the land, the lease shall be deemed to have been terminated."

The notification issued through the publication to lease out the lands as under:

PUBLIC AUCTION NOTIFICATION TO LEASE OUT THE LANDS

The lands belonging to Sri Seetharama Swamy Devasthanam, Yenamadala Village, Prattipadu Mandal, Guntur District, as shown in the schedule below, will be leased out for a period of three years from 2007-2008 to 2009-2010 by conducting public auction schedule to be held at 10.00 A.M. on 21.05.2007 in the presence of officers of Endowments Department. The interested persons can participate in the said auction by taken all the particulars.

SCHEDULE

Located of Land In the Village.	Sy. No.	Nature	Extent Ac.Cts.	Name of old Tenant	Old Lease per year.	Remarks
Junamchundur(V)	334, 335	Dry	2.16	Sri Kagga Edukondalu	4,100	
Yenamadala (V)	288	Dry	5.09	Sri Shaik Srinu	16,000	
Yenamadala (V)	671, 680	Dry	0.65	Sri Bonthu Venkateswarlu	1,100	Completed the Leased period.
Yenamadala(V)	564, 907	Dry	4.58	Sri Varikallu Venkateswarlu	17,600	
Yenamadala (V)	515/2	Wet	0.66	Sri Jadala Venkateswarlu	5 ¼ Bag	
Yenamadala (V)	461	Dry	4.36	Sri Yadala Venkateswarlu	8,100	
Chowdavaram (V)	178	Dry	3.80	Sri Indurthi Subbaiah	3,000	As violated Section 82 of Endowments Act 30/1987
Chowdavaram (V)	178	Dry	2.30	Smt.Chowdavarapu Venkayamma.	4,000	
Chowdavaram (V)	178	Dry	2.30	Sri Chiratannagandla Koteswara Rao	5,000	
Chowdavaram (V)	178	Dry	3.45	Sri Mudraboina Lohidas	5,500	

Conditions of Auction:-

1. The auction proceedings are subject to approval of higher authorities of Endowments Department.
2. Prospective bidders shall make deposit of Rs.5000/- so as to participate in the public auction.
3. The Manager reserve his right either to postpone or to stop the public auction without assigning any reasons.
4. The persons who fell in arrears or got disputes with the temple are disqualified to participate in the public auction.
5. The prospective bidders shall produce certificate obtained from the concerned M.R.O. showing their properties and solvency to the Manager at the time of auction. In case the farmer who is not having any property intended to participating in the public auction he shall undertake to produce security of a farmer having assets.
6. Immediately on completion of auction proceedings the highest bidder shall pay 2/3 of bid amount and obtain receipt the balance 1/3 lease amount shall be paid at the time of registration of lease.
7. The conditions prescribed under Section 82(2) of Endowments Act 30/1987 applicable to landless poor, are not applicable to the present public auction and the present bidders thereunder.
8. The auction will be conducted for every three years.
9. The other conditions will be intimated at the time of auction."

The relevant certificates issued by the Assistant Commissioner Endowments and his proceedings relating thereto, had been placed before this Court, wherein specific declaration was made in relation to the petitioners that they are landless poor persons under Section 82 of the Act. It is stated that even as per the Rules, such parties are also bound to participate in the auction. It is also stated that in the light of the language employed in Section 82 (1) and (2) of the Act, these petitioners, who are otherwise defaulters, cannot claim any right whatsoever. Even otherwise, it is stated that it cannot be said that, at present, these parties can be treated as having the status of tenants. This Court is not inclined to express any opinion relating to the amounts to be deposited by the tenants, as specified by the relevant Rules. It is pertinent to note that the certificates issued by the Assistant Commissioner, Endowments, declaring these petitioners as landless poor persons falling within the meaning of Section 82 of the Act, are in force, as on today, though it is stated that similar appeals had been preferred before the appellate authority. Specific stand had been taken both in the affidavit filed in support of the writ petition and also in the reply affidavit that the particulars and details relating to those appeals,

panchanama had not been furnished. Even if it is to be taken that such appeals had been preferred by the Institution in question, till the appeals are decided and till the orders of the Assistant Commissioner, Endowments are duly set aside, it is to be held that the petitioners, who had been declared as tenants, would be having some protective rights. In the light of the same, as far as possible, these extents are concerned, the 4th respondent is in possession cannot act contrary to the provisions of the Act and the Rules framed thereunder. In the light of the same, especially in view of the specific stand taken both in the affidavit filed in support of the writ petition and the reply affidavit asserting that the alleged panchanama was antedated and since it is a paper panchanama and also further asserting that the petitioners continued to be in possession of the property, this Court is of the considered opinion that such possession to be protected for the present. The appeals said to be pending before the competent authority, preferred by the 4th respondent, shall dispose of in accordance with law. It is also, however, made clear that the 4th respondent-Institution is at liberty to collect such amount, which has been due from the petitioners in accordance with the Rules, since the petitioners are continuing in possession of these properties at present.

In the light of the same, this Court is of the considered opinion that the writ petition be disposed of directing the respondents not to disturb the possession of the petitioners, except in accordance with law and further, the competent authority is at liberty to dispose of the appeals, said to be pending, as early as possible, after putting the writ petitioners also on notice, in accordance with law. It is also made clear that the 4th respondent-Institution is at liberty to collect such other amounts, which may be due from the petitioner, if any, in accordance with the Rules governing the field.

Accordingly, with the above directions, the writ petition is disposed of. There shall be no order as to costs.

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(P.S.NARAYANA, J)

23.10.2007

GJ